

JESSE LASLOVICH

NICK MAZANEC

Office of the Commissioner of Securities
and Insurance, Montana State Auditor (CSI)

840 Helena Avenue

Helena, MT 59601

(406) 444-2040

Attorneys for the CSI

**BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR**

IN THE MATTER OF:)	Case No.: SEC-2012-260
)	
Funky Shark, LLC, and Scott R. Wacker,)	CONSENT AGREEMENT AND FINAL
)	ORDER
Respondents.)	
)	
)	

This Consent Agreement and Final Order (Agreement) is entered into by the Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI), acting pursuant to the authority of the Securities Act of Montana, Mont. Code Ann. § 30-10-101, et seq. (Act); and Funky Shark, LLC, (Funky Shark) and Scott R. Wacker (Wacker) (collectively, Respondents).

RECITALS

WHEREAS, the CSI received information that Respondents may have been operating the Funky Shark penny auction program in violation of the Act;

WHEREAS, based on the CSI's investigation, the CSI alleges that Respondents violated Mont. Code Ann. § 30-10-202 by selling unregistered securities from within Montana in the form of Funky Shark Founder (Founder) shares;

WHEREAS, based on the CSI's investigation, the CSI alleges that Respondents violated Mont. Code Ann. § 30-10-201(1) by selling Founder shares from within Montana while Respondents were not registered in Montana as securities broker-dealers or salespersons;

WHEREAS, based on the CSI's investigation, the CSI alleges that Respondents violated Mont. Code Ann. § 30-10-301(1)(b) by failing to disclose to Founder share purchasers that (1) the shares were not registered as securities in the state of Montana, and (2) Respondents were not registered as broker-dealers or salespersons in the state of Montana;

WHEREAS, based on the CSI's investigation, the CSI alleges that Respondents violated Mont. Code Ann. § 30-10-325 by promoting a pyramid promotional scheme, namely, the Funky Shark promotional scheme;

NOW, THEREFORE, in consideration of the following mutual undertakings, the CSI and Respondents enter into the following:

STIPULATIONS AND CONSENTS

1. Without admitting or denying any of the CSI's allegations, Respondents stipulate and agree to the following:

A. Within ten business days from the execution of this Agreement, Respondent Wacker shall pay a fine of \$10,000. The fine must be made payable to the State of Montana and sent to the Office of the Commissioner of Securities and Insurance, Montana State Auditor, c/o Lisa Monroe, Legal Assistant, 840 Helena Avenue, Helena, MT 59601. At Respondent Wacker's discretion, the fine amount may be paid from his personal funds currently held in the Bank of America trust account of Thompson Burton PLLC Trustee (Trust Account).

- B. Within ten business days from the execution of this Agreement, Respondent Funky Shark shall pay a fine of \$30,000. The fine must be made payable to the State of Montana and sent to the Office of the Commissioner of Securities and Insurance, Montana State Auditor, c/o Lisa Monroe, Legal Assistant, 840 Helena Avenue, Helena, MT 59601. At Respondent Wacker's discretion, the fine amount may be paid from his personal funds currently held in the Trust Account.
- C. If the Respondent liable for a fine fails to pay that fine within the time period specified in this Agreement, both Respondents shall become jointly and severally liable for the fine amount, and that fine amount shall be due immediately.
- D. Respondents shall immediately and on an ongoing basis refund up to \$834,127.30 to Funky Shark participants as specified in Exhibit A.
- i. Respondents shall transmit all refunds using the methods requested by Funky Shark participants.
 - ii. Respondents shall otherwise conduct the refund process at the direction of and in the manner specified by the CSI.
- E. On a weekly basis until all participants have received refunds, Respondent Wacker shall provide the CSI an updated spreadsheet identifying all Funky Shark participants, the methods of refund those participants have requested, and the extent to which refunds have been effectuated.
- F. Respondents shall provide any further information the CSI requires to oversee the refund process.


- G. Twenty days from the execution of this Agreement, Respondents shall remit to the CSI all monies representing unclaimed Funky Shark participant funds. The CSI shall contribute all remitted monies to the Investor Protection Trust.
- H. Once the CSI has verified that Respondents have fully performed under ¶¶ 1A-1G of this Agreement, the CSI shall approve the release of all personal funds of Respondent Wacker currently held in the Trust Account.
- I. For two years following the execution of this Agreement, Respondent Wacker shall inform the CSI Deputy Securities Commissioner of his operation of or participation in any multilevel distribution company.
- J. Respondent Wacker shall not operate or participate in any multilevel distribution company not registered with the CSI.
2. All parties to this Agreement stipulate and agree as follows:
- A. Respondents acknowledge that they and/or their authorized representative have read and understand each term of this Agreement and that they enter into this Agreement voluntarily and without reservation.
- B. Respondents and the CSI agree that this Agreement resolves the alleged violations set forth in the Recitals.
- C. The CSI warrants and represents that it does not now have any intent to bring any further action against Respondents based upon the conduct alleged in the Recitals.
- D. With respect to the Recitals, Respondents specifically and affirmatively waive a contested case hearing and their right to appeal under the Montana Administrative Procedures Act, including Title 2, chapter 4, part 7, and elect to resolve this matter on the terms and conditions set forth therein.

- E. Respondents fully and forever release and discharge the CSI from any and all actions, claims, causes of action, demands, or expenses for damages or injuries, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of the Recitals.
- F. This Agreement is entered without adjudication of any issue, law or fact. It is entered solely for the purpose of resolving the CSI's investigation and allegations, and is not intended to be used for any other purpose.
- G. This Agreement constitutes the entire agreement between the parties and no other promises or agreements, either express or implied, have been made by the CSI or by any member, officer, agent, or representative of the CSI to induce Respondents to enter into this Agreement.
- H. This Agreement may not be modified orally, and any subsequent modifications to this Agreement must be mutually agreed upon in writing to be effective.
- I. This Agreement shall be incorporated into and made part of the attached Final Order issued by the Commissioner of Securities and Insurance, Montana State Auditor (Commissioner) herein.
- J. Upon the signing of the Final Order by the Commissioner or her representative, this Agreement and Final Order will be an order of the CSI. The CSI has jurisdiction over the enforcement of the Final Order, and failure to comply with it may constitute separate violations of the Act, as provided in Mont. Code Ann. § 30-10-305, and may result in subsequent legal action by the CSI.
- K. This Agreement shall be effective upon signing of the Final Order.

L. This Agreement and Final order are public records under Montana law and as such may not be sealed or otherwise withheld from the public.


DATED this 18th day of December, 2012

**OFFICE OF THE COMMISSIONER OF
SECURITIES AND INSURANCE**

By: 
NICK MAZANEC
Attorney

DATED this 17 day of December, 2012

FUNKY SHARK, LLC

By: 
Title: Owner

DATED this 17 day of December, 2012

SCOTT R. WACKER



FINAL ORDER

Pursuant to the authority vested by Mont. Code Ann. § 2-4-603 and §§ 30-10-101, et seq.,
and upon review of the foregoing Consent Agreement and good cause appearing,

IT IS HEREBY ORDERED that the foregoing Consent Agreement between the Office of
the Commissioner of Securities and Insurance, Montana State Auditor, and the Respondents,
Funky Shark, LLC and Scott R. Wacker, is adopted as set forth fully herein.

DATED this 19th day of December, 2012.

MONICA J. LINDEEN
Commissioner of Securities and Insurance
Montana State Auditor

By: 
LYNNE EGAN
Deputy Securities Commissioner

CERTIFICATE OF SERVICE

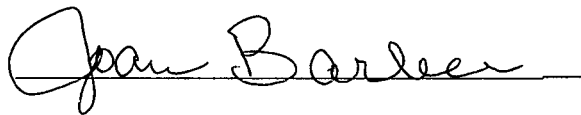
I hereby certify that a true and accurate copy of the foregoing was served on the 19th
day of December, 2012, by US mail, first-class postage paid, to the following:

Scott R. Wacker
216 Meadowlark Drive
Bozeman, MT 59718

Funky Shark, LLC
c/o Scott R. Wacker
216 Meadowlark Drive
Bozeman, MT 59718

Kevin Thompson
Thompson Burton PLLC
7 Corporate Centre
840 Crescent Centre Drive, Suite 140
Franklin, TN 37067

Nick Mazanec, CSI
(Hand Delivered)

A handwritten signature in cursive script, reading "Joan Barber", written over a horizontal line.